



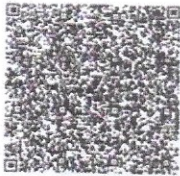
सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No.	: IN-DL79848754583878S
Certificate Issued Date	: 14-Sep-2020 04:34 PM
Account Reference	: SELFPRINT (PU)/ dl-self/ NEHRU/ DL-DLH
Unique Doc. Reference	: SUBIN-DLDL-SELF66923056432294S
Purchased by	: POOJA DODD
Description of Document	: Article 4 Affidavit
Property Description	: IN RELATION TO ARBITRATION AWARD
Consideration Price (Rs.)	: 0 (Zero)
First Party	: POOJA DODD
Second Party	: NOT APPLICABLE
Stamp Duty Paid By	: POOJA DODD
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



SELF PRINTED CERTIFICATE
TO BE VERIFIED BY THE RECIPIENT

.....Please write or type below this line.....

ARBITRATION AWARD

.IN REGISTRY - NATIONAL INTERNET EXCHANGE OF INDIA (NIXI)

.IN domain Name Dispute Resolution Policy

INDRP Rules of Procedure

Statutory Alert:

1. The authenticity of this Stamp Certificate should be verified at www.sholestamp.com. Any discrepancy in the details on this Certificate and as available on the website renders it invalid.
2. The onus of checking the legitimacy is on the users of the certificate.
3. In case of any discrepancy please inform the Competent Authority.

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Disputed Domain Name: www.fireballwhisky.in

Decision of Pooja Dodd, Sole Arbitrator

INDRP Case No. 1244

IN THE MATTER OF:

Sazerac Brands LLC

10101 Linn Station Road

Suite 400, Louisville Kentucky 40223,

United States of America

...Complainant

Versus

Sebastian Held

Isoldenstr, 32

Muenchen, Bayern,

80804- Germany

...Respondent

1. The Parties:

1.1 The Complainant in this Arbitration Proceeding is Sazerac Brands, LLC with registered office at 10101 Linn Station Road, Suite 400, Louisville Kentucky 40223, United States of America. The Complainant is represented by Saikrishna and Associates, Advocates, with office at VJ Business Tower, Plot No. A-6, Sector 125, NOIDA, Uttar Pradesh 201301.

1.2 The Respondent is Sebastian Held, with address listed as Isoldenstr, 32, Muenchen, Bayern, 80804 - Germany. The email address connected with the Respondent is sepp.held@gmx.de and the phone number connected with the Respondent is +49 8938908097.

PD

2. Domain Name and Registrar:

- 2.1 The Disputed Domain Name is <fireballwhisky.in> which was registered on December 7, 2015.
- 2.2 The accredited Registrar with whom the Disputed Domain Name is registered is GoDaddy Operating Company, LLC situated at First Floor, 01A167, We Work, Bristol Chowk, Platina Tower, MG Road, Sector-28 Gurgaon, Haryana, 122002- India.

3. Procedural History:

- 3.1 This Arbitration Proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (the “**Policy**”), adopted by the National Internet Exchange of India (“**NIXI**”) and the INDRP Rules of Procedure (the “**Rules**”), which were approved on June 28, 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996. By registering the Disputed Domain Name with a NIXI accredited Registrar, the Respondent agreed to the resolution of disputes pursuant to the Policy and the Rules.

As per the information received from NIXI, the history of the proceeding is as follows:

- 3.2 The Complainant filed the Complaint with NIXI, against the Respondent. NIXI verified the Complaint and its Annexures for conformity with the requirements of the Policy and the Rules.
- 3.3 On July 16, 2020, I submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by NIXI to ensure compliance with Paragraph 6 of the Rules.
- 3.4 NIXI notified the Parties of my appointment as the Arbitrator *via* email on July 21, 2020 and served an electronic copy of the Complaint on the Respondent. Given the nationwide lockdown due to COVID-19 and in adherence with Rule 2 (e) of the INDRP Rules of Procedure, the electronic service of the Complaint along with annexures amounted to adequate service. I informed the



Parties about the commencement of Arbitration Proceeding on July 23, 2020 and the Respondent was directed to submit a Response within 10 days.

3.5 On August 4, 2020, I informed the Parties that as the 10-day period granted to the Respondent to file a Response had expired the right of the Respondent to file a Reply stood foreclosed and that the Award would be passed on merits.

3.6 On September 2, 2020, while going through the Complaint and documents, I noticed that the details on pages 662 - 668 of the documents (Exhibit 14), did not match those mentioned on page 8 of the Complaint. In fact, Exhibit 14 did not pertain to the Disputed Domain Name. Additionally, the Letter of Authority on pages 673-674 (Exhibit 16) did not authorize Saikrishna & Associates in relation to the Disputed Domain Name and pertained to another domain name dispute. I therefore request the Complainant to submit the correct documents within 5 days. On September 6, 2020, I received the amended Annexures, which were taken on record.

3.7 On September 8, 2020, an email was received from the Respondent stating:

“Dear gentlemen,

I am willing to sell the domain in dispute including if interesting for you

Fireballwhisky.co.uk

Fireballwhisky.de

Fireballwhisky.kr

Kindly forward your offer, sale and transfer would happen via godaddy.

Best regards,

Sebastian Held”

3.8 There has been no correspondence since.



4. Grounds for Arbitration Proceedings:

- A. The Disputed Domain Name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;
- B. The Respondent has no rights or legitimate interest in respect of the domain name; and
- C. The Disputed Domain Name was registered and is being used in bad faith.

5. Summary of the Complainant's Contentions:

In support of its case, the Complainant has made the following submissions:

- 5.1 Founded in 1869, the Complainant (which includes its parent company, predecessors, assigns, subsidiaries, joint ventures, affiliates, licensees and sister concerns) owns many of America's most venerable distilling companies. The Complainant is the legitimate owner of the domain name "fireballwhisky.com" which is registered in its name since October 23, 2007. The Complainant is the registered proprietor of the word mark FIREBALL covering goods in class 33 and the device



mark covering goods in classes 32 and 33, in India. A perusal of Annexure 6 substantiates these claims.

- 5.2 Additionally, the Complainant has also secured registrations for the FIREBALL mark in more than 70 jurisdictions globally including but not limited to Argentina, Australia, Bahrain, Brazil, Chile, China, Costa Rica, Ethiopia, EUTM, France, Hong Kong, Israel, Japan, Malaysia, Mexico, New Zealand, Norway, OAPI, Peru, Russian Federation, Singapore, Taiwan, Thailand, United Kingdom and United States of America. A perusal of Annexure 7 substantiates these claims.

- 5.3 The Complainant's predecessor was one of America's oldest family owned and privately held distillers. Founded in 1869, the Complainant owns many of America's most venerable distilling companies - Buffalo Trace Distillery, A. Smith Bowman, Glenmore Distillery and 1792 Barton.

- 5.4 One of the top selling whiskies of the Complainant is called FIREBALL, which is readily available across five continents. The Complainant acquired the brand FIREBALL in the year 2000 and since then, it has been witnessing astounding sales and popularity in the global liquor market. In addition, the Complaint's trademark FIREBALL is equally well-known on account of the fact that the Complainant has widespread Internet presence, which functions as a ready medium for information about the Complainant's goods and service to the public. Besides advertising and promoting its goods and services through digital and social media, the Complainant also hosts websites that resolve at www.fireballwhisky.com and www.sazerac.com, which have further information about the Complainant. A perusal of Annexures 1 and 2 accompanying the Complaint substantiates these claims.
- 5.5 The International Wine and Spirits Competition (IWSC) named the Complainant as the "Distiller of the year" in London in November 2014, and a year later, awarded it with the "Americas & Caribbean Spirits Producer of the Year" Trophy. In addition, the Complainant also claims to have received numerous other awards.
- 5.6 The Complainant is the owner of the FIREBALL Mark which it has been using on a wide array of services openly, continuously and extensively. In fact, the FIREBALL trademark has since come to symbolize the Complainant's goods and services, such that the trade and public associate the same with the Complainant, exclusively.
- 5.7 The Complainant asserts that it is the proprietor of FIREBALL trademark by virtue of priority in adoption, continuous and extensive use, widespread advertising and tremendous reputation. The Complainant further avers that its FIREBALL trademark has garnered a huge social media coverage and rapidly gained recognition around the world due to the Complainant's innovative marketing approach, media coverage and promotion in India and has cemented itself in the global liquor industry. The popularity of the Complainant's FIREBALL branded whisky is evidenced by the fact that the official Facebook page of this whisky has approximately 9,72,994 likes and 9,58,284 followers, the official Twitter account has over 96k followers and the official Instagram



Page has more than 100k followers. The Complainant has also sought to rely on extracts from a market analysis report issued by Sarah Butler (Managing Director at NERA Economic Consulting ("NERA") where she is the chair of the Survey and Sampling practice and a member of the Intellectual Property Product Liability, Anti-trust and Labor Practices in the United States of America), substantiating its goodwill and market presence. Annexures 3-5, 8 - 11 accompanying the Complaint substantiate these claims.

- 5.8 The Complainant's primary domain name <fireballwhisky.com> has been registered and used by the Complainant since October 23, 2007. In addition, the Complainant also owns various other domain names that incorporate the Complainant's FIREBALL trademark such as fireballwhiskey.cn, fireballwhiskey.co.uk, fireballwhiskey.com, fireballwhiskey.in, fireballwhisky.cn, fireballwhisky.com, fireball.red, fireballuk.com among numerous others. A perusal of Annexure 13 accompanying the Complaint substantiates this claim.
- 5.9 The Complainant asserts that it has been vigilant in safeguarding its rights and has promptly, effectively, actively and regularly defended its domain names and protected them against cyber-squatters and infringers. Annexure 12 accompanying the Complaint substantiates these claims.
- 5.10 The Complainant asserts that the Disputed Domain Name <fireballwhisky.in> is almost identical to the Complainant's registered trademark **FIREBALL**. The addition of the descriptive word 'whisky' further clarifies the *mala fide* of the Respondent in registering the Disputed Domain Name as it is amply clear that FIREBALL refers to a whisky which is sold exclusively by the Complainant. It is evident that the Disputed Domain Name contains and incorporates the Complainant's well-known and registered trademark FIREBALL in its entirety and is bound to induce members of the public and trade to believe that the Respondent has an association, relationship or approval of the Complainant.
- 5.11 The Disputed Domain Name copies the Complainant's FIREBALL trademark in its entirety and is nearly identical to the Complainant's other domains, namely, fireballwhiskyindia.com, fireballwhiskey.in and fireballwhisky.com



5.12 The Complainant has also stated that the date of registration of the Disputed Domain Name appears to be December 7, 2015 which is subsequent to the date of adoption and use of the FIREBALL trademark by the Complainant. Additionally, it appears that the Respondent is from Germany, a country where the Complainant's FIREBALL branded whisky is sold and is extremely popular. Therefore, it is impossible for the Respondent to claim that it is unaware of the Complainant and the FIREBALL trademark.

5.13 The Complainant has alleged that the Respondent has no rights or legitimate interests in the Disputed Domain Name and can have no possible justification for registering the Disputed Domain Name as the Complainant has never assigned any proprietary or contractual right to the Respondent.

5.14 The Complainant further argues that the Disputed Domain Name was registered in bad faith with ulterior motives to make monetary profits by either selling, renting or otherwise transferring the Disputed Domain Name to the Complainant or to its competitors. The Complainant has stated that lack of any legitimate/good faith use suggests bad faith.

5.15 In support of the contentions, the Complainant has furnished copies of the following documents:

Annexure 1	Copy of the official distributor list indicating the wide presence of FIREBALL whisky worldwide of the Complainant.
Annexure 2	Copy of pages taken from Complainant's websites and social media accounts evidencing the use FIREBALL mark since 2000.
Annexure 3	Copy of media articles in support of popularity of the Complainant's FIREBALL whisky website on social media.
Annexure 4	Copy of official pages captured from the social media accounts evidencing the popularity of the Complainant's FIREBALL whisky.
Annexure 5	Copy of few extracts from a market analysis report issued by Sarah Butler- Managing Director at NERA Economic Consulting ("NERA") evidencing Complainant's reputation and goodwill in its trademark FIREBALL whisky.

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Annexure 6	Copy of the registration certificates of Complainant's FIREBALL trademarks in India.
Annexure 7	Copy of the foreign registration certificates of Complainant's FIREBALL trademarks.
Annexure 8	Copy of various articles appearing on the global platform featuring the Complainant's goods under the trademark FIREBALL whisky.
Annexure 9	Copy of selective few media reports regarding the Complainant's goods under the mark FIREBALL , extensively publicized by the Indian Media.
Annexure 10	Copy of the media article discussing the impact of Complainant's advertising and promotion on the popularity of FIREBALL brand.
Annexure 11	Copy of selective extracts from the social campaigns and promotions on the popularity of FIREBALL brand in India.
Annexure 12	Selective copies of the legal action and the orders evidencing that the Complainant has been active and vigilant in enforcing and protecting its rights in its trademark FIREBALL .
Annexure 13	The WhoIs details of Complainant's selective domain names for FIREBALL brand.
Annexure 14	The Whois extract of the Complainant's domain name fireballwhisky.in as shared by the .IN Registry and the page extract from the online database
Annexure 15	A copy of the Domain Name Registration Agreement with GoDaddy.com
Annexure 16	A copy of the letter dated August 30, 2019 issued by the Complainant, authorizing Saikrishna & Associates to, <i>inter alia</i> , sign and verify the present Complaint and institute the present proceedings on behalf of the Complainant.
Annexure 17	Copy of the Google search conducted for FIREBALL whisky
Annexure 18	Copy of the WIPO decisions
Annexure 19	A copy of the payment receipt evidencing that the payment in the amount of Rs.35,400/- has been made by wire transfer on July 7, 2020



6. Discussions and findings:

- 6.1 As per paragraph 4(i) of the Policy, the Complainant has to show that the Disputed Domain Name is identical or confusingly similar to trademark in which the Complainant has rights. The submissions and documents provided by Complainant lead to the indisputable conclusion that the FIREBALL trademark forms an integral part of the Complainant's business.
- 6.2 It is a well-established principle that that once a Complainant makes a *prima facie* case showing that a Respondent lacks rights to the domain name at issue, the Respondent must come forward with the proof that he has some legitimate interest in the disputed domain name, to rebut this presumption.
- 6.3 The Respondent has not filed any Reply to the Complaint. Paragraph 8(b) of the Rules requires that the Arbitrator must ensure that each party is given a fair opportunity to present their case. Even though sufficient time was granted, the Respondent chose to refrain from submitting any Reply to the Complaint.
- 6.4 Paragraph 11(a) of the Rules empowers the Arbitrator to proceed with an *ex parte* decision in case any party does not comply with the timelines set or fails to submit a Reply to the Complaint filed against it. As stated above, I gave the Respondent 10 days to file a Reply but the Respondent failed to file any Reply to the Complaint. In fact, the only communication from the Respondent during the proceedings was an offer to sell the Disputed Domain Name. As a result, I find that the Respondent has been given a fair opportunity to present his case but has chosen not to come forward and defend himself. Thus, this *ex parte* award.
- 6.5 Paragraph 12(a) of the Rules provides that the Arbitrator shall decide the Complaint on the basis of the statements and documents submitted in accordance with the Arbitration and Conciliation Act, 1996 and any law that the Arbitrator deems fit to be applicable. In accordance with Paragraph 12 of the Rules, the Arbitrator may draw such inferences as are appropriate from the Respondent's failure to respond to the Complainant's assertions and evidence or to otherwise contest the



Complaint. In the circumstances, my decision is based upon the Complainant's assertions and evidence and inferences drawn from the Respondent's failure to file a Reply, the Respondent's offer to sell the Disputed Domain Name and in turn, the lack of interest in the Disputed Domain Name.

7. The Issues involved in the Dispute:

7.1 The Complainant invokes Paragraph 3 of the Rules to initiate the Arbitration Proceeding by submitting a Complaint to NIXI. The Respondent in registering a .in domain name submitted to the mandatory Arbitration Proceeding in terms of Paragraph 4 of the Policy, which determines the elements for a domain name dispute, which are:

- i. Whether the domain name in question is identical or confusingly similar to a trademark;
- ii. Why the Respondent cannot claim any legitimate interest in the trademark; and
- iii. Why the domain name in question should be considered as having been registered and being used in bad faith.

These elements are discussed below in tandem with the facts and circumstances of this case.

7.2 Element 1- The Respondent's domain name is identical/confusingly similar to a name, trademark or service mark in which the Complainant has rights:

- a. The Complainant is a well-known American distiller. The Complainant has successfully demonstrated its proprietary rights in and to the FIREBALL trademark by virtue of priority in adoption and use globally, including in India. It has been held that when a domain name contains a trademark in its entirety, the domain name is deemed identical or at least confusingly similar to the complainant's trademark. The Disputed Domain Name contains the Complainant's FIREBALL trademark in its entirety. In my view, given that the Complainant is well known for its FIREBALL branded whiskey, the inclusion of the suffix "whisky" in the Disputed Domain Name strengthens the claim of deceptive similarity between the Disputed Domain Name and the Complainant's FIREBALL trademark. Decisions relied upon by the Complainant, namely -



Microsoft Corporation v. Chun Mun Kam, INDRP/119, *International Business Machines Corporation v. Zhu Xumei* INDRP/646, *Jaguar Land Rover v. Yitao* INDRP/641, *Banco Bradesco S/A v. NA* Case No. D2008-1949, *Black and Decker Inc. v. Domain Admin, Whois Privacy Corp* WIPO Case No. D2015-0768, are all relevant and relied upon by me.

- b. The Complainant has registered numerous domain names which incorporate its FIREBALL trademark along with the suffix “whiskey” or “whisky”. It is noteworthy that while some of them spell the word as “whiskey” with the inclusion of the letter e, others have been adopted with “whisky” spelt without the letter “e”. Even though the Disputed Domain Name has a suffix, the inclusion of the word “whisky” only adds to the deceptive similarity, as it in no way dilutes, reduces or diminishes the likelihood of confusion and deception being caused, specifically since the Complainant is well known for its FIREBALL branded whisky. An Internet user of average intelligence and imperfect recollection is bound to be misled into believing the Disputed Domain Name originates from the Complainant. It has been consistently held that merely causing Internet users to wonder whether the domain name is associated with the complainant is confusion enough. The Complainant has relied upon *Apple Inc. v. Fred Bergstrom, Lotta Carlsson, Georges Chaloux and Marina Bianchi* WIPO Case No. D2011-1388, on which I am inclined to rely.
- c. Moreover, adoption of the FIREBALL trademark by the Complainant and domain name registrations of various domains incorporating the words “fireball” and “whisky” or “whiskey” by the Complainant predate the registration of the Disputed Domain Name. Thus, it is clear that the Complainant was first in time to adopt the FIREBALL trademark as well as fireballwhiskey and fireallwhisky formative domain names. I am convinced beyond doubt that the Disputed Domain Name is confusingly similar to the Complainant’s FIREBALL trademarks and related domains. The evidence produced by the Complainant clearly shows that the Disputed Domain Name, which is nearly identical to the Complainant’s FIREBALL trademark will inevitably lead consumers to believe that the Disputed Domain Name is affiliated in some way to the Complainant. Hence, the first element is satisfied.



7.3 Element 2 - The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name:

- a. In order to establish that the Respondent has rights and legitimate interest, the Respondent is required to show either of the following as per paragraph 7 of the Policy:
- 1) That before the dispute, the Respondent was preparing to use the Disputed Domain Name or the name corresponding to the same;
 - 2) That the Respondent is commonly known by the Disputed Domain Name; or
 - 3) That the Respondent is making a legitimate or fair use of the Disputed Domain Name.

Despite being served with the electronic copy of the Complaint, the Respondent chose not to defend the adoption of the Disputed Domain name by him. The submissions in the Complaint make it evident that the Respondent has not made any use of, and is not commonly known by the Disputed Domain Name. Moreover, the Respondent's offer to sell the Disputed Domain Name shows that he is not making any legitimate use of the Disputed Domain Name and was motivated by avarice in the registration of the Disputed Domain Name.

- b. The Complainant has asserted that the Respondent has registered the Disputed Domain Name without the knowledge, consent or authorization of the Complainant; and that the Respondent has no proprietary or contractual right over the Complainant's FIREBALL trademark.
- c. The failure to controvert the allegations by the Complainant leads to an adverse inference against the Respondent. The fact that the Complainant's FIREBALL Mark is well known in Germany leads to the indisputable conclusion that the Respondent was well aware of the reputation garnered by the FIREBALL trademark. Moreover, the fact, that the Respondent has come forward to sell the Disputed Domain, along with other domains incorporating the word "fireball" shows that he has no rights or legitimate interests in the Disputed Domain Name. As a necessary corollary, it is implicit that the Respondent registered the various domain names featuring the Complainant's FIREBALL trademark solely with the intention to sell them to the Complainant or its competitor, and as such does not have any legitimate interests in the domains in question.



- d. Therefore, I find that the Respondent has not made use of the Disputed Domain Name in connection of *bona fide* offering of goods or services; there is nothing on record to show that the Respondent is commonly known by the Disputed Domain name; and neither has the Respondent made any legitimate non- commercial or fair use of the Disputed Domain Name. Thus, it can be reasonably presumed that the Respondent does not have any legitimate interests in the Disputed Domain Name.
- e. Further, once the Complainant has established a *prima facie* case, the burden of proof to establish any legitimate interests over the Disputed Domain Name falls on the Respondent. By not responding to the Complaint, the Respondent has failed to establish legitimacy in registering the Disputed Domain Name. Thus, I find that Element (ii) has been satisfied.

7.4 Element 3 - The Disputed Domain Name should be considered as having been registered and being used in bad faith.

- a. The Complainant has proved beyond doubt that the Complainant's FIREBALL trademark has acquired tremendous goodwill and reputation across the globe and has a strong recall value. It is inconceivable that the Respondent was not aware of the Complainant's FIREBALL trademark and/or the exclusive rights of the Complainant over the trademark and it seems that the Respondent did not have any other purpose for registering the Disputed Domain Name but for monetary gain. The Respondent had no intention of *bona fide* use of the Disputed Domain Name, which is apparent due to its non-active use for the last 5 years.
- b. The fact that the Disputed Domain Name is being held in a passive manner for the last 5 years and has not been used relation to any legitimate business, coupled with the fact that the Respondent did not find it necessary to Reply to the Complaint, but found it appropriate to offer to sell the Disputed Domain Name along with other domains incorporating the FIREBALL trademark, lead me to believe that the Respondent is a cyber squatter and all of the above weigh heavily in favor of bad faith in the registration of the Disputed Domain Name. Thus, this Element too, is satisfied.



The combination of the above factors leads me to believe that there is a merit in the Complaint, namely - the Complainant has strong trademark rights, the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name and that it has been adopted in bad faith.

8. Decision:

- 8.1 In view of the foregoing, I am convinced that the Disputed Domain Name is confusingly similar to the Complainant's FIREBALL/FIREBALL WHISKY trademarks, that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name and that the Disputed Domain Name was registered in bad faith. In accordance with the Policy and Rules, I direct that the Disputed Domain Name be transferred to the Complainant, with a request to NIXI to monitor the transfer.
- 8.2 In the facts and circumstances as discussed above, the Respondent is ordered to pay costs of ₹ 50,000 for present proceedings to the Complainant.
- 8.3 This award is being passed within the statutory deadline of 60 days from the date of commencement of arbitration proceeding.



Pooja Dodd

Sole Arbitrator

Dated: September 21, 2020